

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

The Steamship "PORTLAND," Her Engines, Boilers, Boats, Tackle, Apparel, Furniture and Appurtenances, and THE NATIONAL SURETY COMPANY, a Corporation,  
Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,  
Appellee.

---

Apostles on Appeal.

---

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California,  
First Division.

---

FILED  
JAN 6 - 1927  
F. D. MONTGOMERY  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

The Steamship "PORTLAND," Her Engines, Boilers, Boats, Tackle, Apparel, Furniture and Appurtenances, and THE NATIONAL SURETY COMPANY, a Corporation,  
Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,  
Appellee.

---

Apostles on Appeal.

---

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California,  
First Division.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Libel .....	9
Answer .....	13
Assignment of Errors.....	26
Bond for Costs on Appeal.....	33
Bond for Release of Vessel.....	7
Certificate of Clerk U. S. District Court to Apostles on Appeal.....	38
Citation on Appeal (Copy).....	37
Citation on Appeal (Original).....	39
Claim .....	6
Decree .....	22
Memorandum for Stipulation of Facts.....	16
Notice of Appeal (August 10, 1920).....	25
Notice of Appeal (November 19, 1920).....	28
Notice of Filing Bond for Costs on Appeal and Bond Staying Execution on Appeal.....	35
Order Extending Time to and Including Octo- ber 9, 1920, Within Which to File Record and Docket Cause.....	42
Order Extending Time to and Including No- vember 9, 1920, Within Which to File Rec- ord and Docket Cause.....	43

Index.	Page
Order Extending Time to and Including December 5, 1920, Within Which to File Record and Docket Cause.....	44
Order Extending Time of Appellant to and Including January 10, 1921, Within Which to Print the Apostles on Appeal and File and Docket This Cause on Appeal.....	45
Order That Decree be Entered in Favor of Libelant, etc... ..	21
Praecipe for Apostles on Appeal.....	1
Statement of Clerk U. S. District Court.....	2
Stipulation Re Charter-party .....	46
Stipulation Re Filing Notice of Appeal.....	29
Supersedeas Bond on Appeal.....	30

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

CLERK'S OFFICE.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Praeceptum for Apostles on Appeal.**

To the Clerk of Said Court:

Sir: Please incorporate in the Apostles on Ap-  
peal in the above-entitled matter the following:

This Praeceptum.

Claim.

Bond for Release of Vessel.

Amended Libel.

Answer to Amended Libel.

Statement of Facts.

Interlocutory Decree.

Final Decree.

Notices of Appeal Filed August 10, 1920, and Nov.  
22, 1920.

Bond for Costs on Appeal.

Bond Staying Execution on Appeal.

Notice of Filing Bonds on Appeal.

Assignment of Errors.

Citation on Appeal.

Dated San Francisco, November 23, 1920.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
Proctors for Appellant.

[Endorsed]: Filed Nov. 24, 1920. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [1\*]

---

In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," Her Engines, etc.,  
Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelant: UNION OIL COMPANY OF CALI-  
FORNIA, a Corporation.

Respondent: The Steamship "PORTLAND," Her  
Engines, etc.

Claimant: GLOBE GRAIN & MILLING COM-  
PANY, a Corporation. [2]

---

\*Page-number appearing at foot of page of original certified Apostles  
on Appeal.



PROCTORS.

For Libelant: McCUTCHEN, WILLARD, MAN-  
NON & GREENE (formerly, McCUTCHEN,  
OLNEY & WILLARD), San Francisco.

For Respondent and Claimant: ANDROS &  
HENGSTLER, San Francisco.

PROCEEDINGS.

1913.

January 29. Filed libel in rem, for supplies  
furnished, in the sum of \$4,607.81.  
Issued monition for the attachment  
of said steamer, which monition  
was, on the following day, re-  
turned with this return endorsed  
thereon: "In obedience to the  
within monition, I attached the  
steamship 'Portland' therein de-  
scribed, on the 29th day of Janu-  
ary, 1913, and have given due  
notice to all persons claiming the  
same that this Court will, on the  
13th day of February, 1913 (if  
that day be a day of jurisdiction,  
if not, on the next day of juris-  
diction thereafter), proceed to  
trial and condemnation thereof,  
should no claim be interposed for  
the same. I further return that  
I posted a notice of seizure on the  
herein-named steamship 'Port-  
land,' and I further return that

I seized the steamship 'Portland' at Moore and Scott's Shipyards on the Estuary, in Oakland, Alameda County, California; I handed to and left a copy of the within monition with Vasilio Theodoro, watchman on the steamship 'Portland.'

San Francisco, Cal., January 30, 1913.

C. T. ELLIOTT,

United States Marshal.

By M. J. Fitzgerald,

Office Deputy." [3]

- January 30. Filed claim of Globe Grain & Milling Co. to steamship "Portland." Filed admiralty stipulation for the release of said steamship in the sum of \$6,500.00.
- February 18. Proclamation made.
- June 2. Filed exceptions to libel.
- 1916.
- November 22. Filed amended libel.
- December 12. Filed exceptions to amended libel.
- 1917.
- May 5. Hearing was this day had on the exceptions to the amended libel, before the Honorable M. T. Dooling, Judge. The exceptions were ordered overruled.
- October 22. Filed answer to amended libel.

1919.

June 5. Filed stipulation of facts.

September 11. Cause ordered submitted on record.

1920.

May 14. Filed order that decree be entered in favor of libelant, and referring the cause to U. S. Commissioner to ascertain and report the amount due.

25. Filed final decree.

August 10. Filed notice of appeal.  
Filed assignment of errors.

18. Filed cost bond, and bond staying execution.

November 22. Filed notice of appeal, and stipulation that the same may be filed in lieu of the one heretofore filed.  
Filed Citation on appeal. [4]

---

In the District Court of the United States of  
America, Northern District of California.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

American Steamship "PORTLAND,"

Respondent.

**(Claim.)**

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The claim of ——— to the American steamship "Portland," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Union Oil Company of California, a corporation, alleges:

That Globe Grain and Milling Co., a corporation, the true and *bona fide* owner of the said American steamship "Portland," her tackle, apparel and furniture, and that no other person is owner thereof.

WHEREFORE, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to claimant and otherwise right and justice to administer in the premises.

GLOBE GRAIN & MILLING Co.

Per R. J. RINGWOOD.

ANDROS & HENGSTLER,

Proctors for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 30th day of Jany., A. D. 1913.

[Seal]

FRANCIS KRULL,  
Deputy Clerk of the District Court, Northern District of California.

[Endorsed]: Filed Jan. 30, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [5]

**(Bond for Release of Vessel.)**

No. 15,370.

District Court of the United States for the Northern District of California, First Division.

**IN ADMIRALTY.**

**STIPULATION ENTERED INTO IN PURSUANT TO THE RULES OF PRACTICE OF THIS COURT.**

WHEREAS, a libel was filed on the 29th day of Jany., in the year of our Lord one thousand nine hundred and thirteen, by Union Oil Company of California against the S. S. "Portland," etc., for the reasons and causes in the said libel mentioned; and, whereas, the said steamship is in the custody of the United States Marshal, under the process issued in pursuance of the prayer of said libel, and whereas the said steamship "Portland," etc., has been claimed by Globe Grain & Milling Co.; and, whereas, it has been stipulated that said steamship may be released from arrest upon the giving and filing of an admiralty stipulation in the sum of Six Thousand Five Hundred Dollars, as appears from said stipulation now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or their sureties, execution for the above amount may issue against their goods, chattels and lands:

NOW, THEREFORE, the condition of this stip-

ulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to Andros & Hengstler, proctors for the claimant of said steamship, abide by and pay the money awarded by the final Decree rendered by the Court or the Appellate Court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue. [6]

GLOBE GRAIN & MILLING CO.,

By R. J. RINGWOOD,

NATIONAL SURETY CO. (Seal)

By FRANK L. GILBERT,

Its Attorney in Fact.

Taken and acknowledged this 30th day of Jany., 1913, before me,

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California.

Northern District of California,—ss.

Frank L. Gilbert, atty. in fact for National Surety Co., party to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of five hundred thousand dollars over and above all his just debts and liabilities.

FRANK L. GILBERT.

Sworn to this 30th day of Jany., 1913, before me,

FRANCIS KRULL,

United States Commissioner, Northern District of California.

Filed the 30th day of Jany., 1913. W. B. Mal-  
ing, Clerk. By Francis Krull, Deputy Clerk. [7]

---

In the United States District Court for the North-  
ern District of California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," Her Engines, etc.,  
Respondent.

**Amended Libel.**

To the Honorable, the Judges of the United States  
District Court for the Northern District of  
California:

The amended libel of the Union Oil Company of  
California, a corporation, against the steamship  
"Portland," her engines, boilers, boats, tackle, ap-  
parel, furniture and appurtenances, alleges as fol-  
lows:

I.

That libelant is a corporation, duly organized and  
existing under and by virtue of the laws of the  
State of California.

II.

That respondent steamship is an American ves-  
sel, and was lying in the waters of San Francisco  
Bay, within the jurisdiction of the United States

and of this Honorable Court at the time the libel herein was filed. [8]

III.

That libelant has heretofore on about the dates hereinafter mentioned furnished respondent vessel with the following supplies and necessaries, to wit:

1. July 5, 1912, at Oleum, California,  
3,500 feet of dunnage of the value  
of .....\$ 43.75
2. July 24, 1912, at Balboa, Canal Zone,  
797.78 barrels of fuel oil of the value  
of ..... 997.23
3. August 5, 1912, at Balboa, Canal Zone,  
315.34 barrels of fuel oil of the value  
of ..... 394.18
4. August 31, 1912, at San Francisco,  
California, 2,959.13 barrels of fuel oil  
of the value of..... 1923.44
5. November 27, 1912, at Balboa, Canal  
Zone, 999.37 barrels of fuel oil of the  
value of ..... 1249.21

IV.

That the dunnage and fuel oil aforesaid was furnished by order of the master and charterer of said vessel, and was charged to said vessel by libelant; that libelant is informed and believes and so alleges that the charter-party, under which said vessel was chartered to the California-Atlantic Steamship Company, did not by its terms provide that the charterer or the master should be without authority to bind the vessel for said supplies and necessaries.



V.

That libelant has a maritime lien upon said vessel for the sum of \$4,607.81, together with interest thereon, said sum being the total value of aforesaid supplies and necessaries.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the [9] United States and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said steamship "Portland," her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and that all persons having any interest therein may be cited to appear and answer, on oath, all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the aforesaid damages, with interest, and that said vessel be condemned and sold to pay the same; and that libelant may have such other and further relief as in law and justice it may be entitled to receive.

IRA A. CAMPBELL,

F. H. GOULD,

Proctors for Libelant. [10]

State of California,

County of Los Angeles,—ss.

E. W. Clark, being first duly sworn, on oath, deposes and says:

That he is the vice-president of the Union Oil Com-

pany of California, a corporation; that he has read the foregoing amended libel, knows the contents thereof, and believes the same to be true.

E. W. CLARK.

Subscribed and sworn to before me this 20th day of November, 1916.

[Seal]                      HAZEL M. GILBERT,  
Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Service of the within amended libel and receipt of a copy is hereby admitted this 22d day of November, 1916.

ANDROS & HENGSTLER,  
GOLDEN W. BELL,  
Proctors for Claimant.

Filed Nov. 22, 1916. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [11]

---

In the United States District Court of the Northern  
District of California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," Her Engines, etc.,  
Respondent.

**Answer.**

To the Honorable M. T. DOOLING, Judge of the United States District Court, for the Northern District of California:

The answer of claimant herein to the libel on file herein respectfully admits, denies and alleges as follows:

I.

Answering unto Article I of said libel, alleges that claimant is not sufficiently advised to enable it to admit or deny the allegation therein set out and calls for proof thereof if material.

II.

Answering unto Article II of said libel, admits the allegations therein set out.

III.

Answering unto Article III of said libel, alleges that claimant is not sufficiently advised to enable it to admit or deny the allegations therein set out or any of them and calls for proof thereof if material. [12]

IV.

Answering unto Article IV of said libel, denies that the alleged dunnage and fuel oil was furnished by order of the master and charterer or by the master of said vessel; denies that the charter-party under which the said vessel was chartered to the California-Atlantic Steamship Company did not by its terms provide that the charterer should be without authority to bind the vessel for said alleged supplies and necessaries and in this behalf claimant alleges that the said charterer was without authority under

the terms of the said charter-party to bind the vessel for said alleged or any supplies as necessaries, and that libelant well knew the facts in the allegation last above.

## V.

Answering unto Article V of said libel, denies that libelant has a maritime lien upon the said vessel for the sum of four thousand six hundred and seven and .81/100 (4,607.81) dollars, together with interest thereon, or for any sum or sums with or without interest thereon or any maritime lien of any nature whatsoever; alleges that claimant is not sufficiently advised as to the other matters in said article set out to enable it to admit or deny the same and calls for proof thereof if material.

## VI.

Answering unto Article VI of said libel, denies that all and singular the premises therein referred to are true except as they are in this answer expressly admitted.

WHEREFORE, claimant prays that the amended libel herein be dismissed and that claimant recover his costs herein and that [13] he have such other and further relief as may be meet and proper in the premises.

ANDROS & HENGSTLER,  
Attorneys for Claimant. [14]

State of California,  
City and County of San Francisco,—ss.

Louis T. Hengstler, being first duly sworn, deposes and says:

That he is one of the proctors for claimant herein; that claimant is absent from the City and County of San Francisco and affiant makes this verification for that reason and in behalf of said claimant; that affiant's sources of knowledge are facts revealed by personal investigation and original documents; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters alleged on information and belief and as to such matters, he believes it to be true.

LOUIS T. HENGSTLER.

Subscribed and sworn to before me this 18 day of October, 1917.

[Seal]

S. I. CLARK,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Due service and receipt of a copy of the within answer is hereby admitted this 22d day of October, 1917.

IRA A. CAMPBELL,

McCUTCHEM, OLNEY & WILLARD,

Proctors for Libelant.

Filed Oct. 22, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

In the United States District Court for the Northern  
District of California, First Division.

IN ADMIRALTY.—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," Her Engines, etc.,  
Respondent.

**Memorandum for Stipulation of Facts.**

IT IS HEREBY STIPULATED by and between  
the parties hereto that this cause may be submitted  
for decision upon the following stipulation of facts,  
to wit:

I.

Libelant is a corporation organized and existing  
under and by virtue of the laws of the State of Cali-  
fornia, and respondent steamship "Portland" at the  
time of seizure herein was within the jurisdiction of  
the above-entitled court.

II.

On 28 August, 1911, owners of respondent steam-  
ship "Portland" entered into a charter-party with  
California-Atlantic Steamship Company, whereby  
owners chartered said steamship to said California-  
Atlantic Steamship Company, hereinafter referred  
to as charterer, for twenty-four calendar months  
with an option to extend the same, said charter being  
subject to the following terms and conditions among  
others:

1. That the owners shall provide and pay for all provisions, water, wages and consular shipping and discharging fees of the Captain, Officers, Engineers, Fireman and Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and shall maintain her in a thoroughly efficient state in hull and machinery for and during the service. [16]

2. That the charterers shall provide and pay for all the Fuel, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the captain, officers or crew), and all other charges whatsoever, except those before stated or hereafter provided to be paid by the owners.

3. That the charterers shall accept and pay at once on delivery of steamer for all fuel in the steamer's bunkers or tanks on delivery, and the owners shall, on expiration of this charter-party, pay for all fuel left in the bunkers or tanks, each at the current market prices at the respective ports where she is delivered to them respectively.

Libelants at all times herein mentioned knew that said California-Atlantic Steamship Company had said vessel under charter as aforesaid, but had not seen same and did not know the terms or conditions thereof.

### III.

On 18th April, 1911, said charterers entered into a contract in writing with libelant, wherein and whereby said charterers agreed to use oil as fuel in

the operation of its then steamers under charter, known as "Navajo," "Mackinaw," "Olson & Mahoney," "Pleiades," "Riverside," "Leelanaw," and "Stanley Dollar," and such other steamers as charterer may charter or operate on the Pacific Coast in its California-Atlantic service, and to purchase from libelant all oil required in the operation of any steamers chartered subsequent to said 18 April, 1911, not specifically mentioned therein, except in such cases as the charter of said vessel might include fuel, and whereby libelant agreed to sell said charterers said oil at the prices and to deliver the same at the places in said agreement specified.

It was therein provided among other things, as follows:

"TIMES OF PAYMENT: All deliveries hereunder in any calendar month shall be settled and paid for in United States Gold Coin, at the price or prices aforesaid, not later than the tenth day of the next succeeding month. Default in any payment for a period of [17] ten days shall justify the cancellation of this contract, at the option of the first party, but if said contract is not cancelled therefor, and while such delinquency continues, the party of the first part may require prepayment for all deliveries hereunder."

#### IV.

From time to time libelant furnished to said steamer "Portland" fuel oil in the amounts as follows, upon orders from the Master:



1. July 5, 1912, at Oleum, California, 3,500 feet of dunnage of the value of . . . . . \$ 43.75
2. July 24, 1912, at Balboa, Canal Zone, 707.78 barrels of fuel oil of the value of . . . . . 997.23
3. August 5, 1912, at Balboa, Canal Zone, 315.34 barrels of fuel oil of the value of . . . . . 394.18
4. August 31, 1912, at San Francisco, California, 2,959.13 barrels of fuel oil of the value of . . . . . 1,923.44
5. November 27, 1912, at Balboa, Canal Zone, 999.37 barrels of fuel oil of the value of . . . . . 1,249.21

V.

Between the 18 April, 1911, and 28 August, 1911, Mr. R. J. Keown, representing libelant, called Mr. A. S. Cheesebrough, representing said California-Atlantic Steamship Company, to the former's office, the former telling the latter that it would be necessary thereafter to charge any oil and dunnage furnished to the vessels mentioned in said agreement of 18 April, 1911, to the vessels. Mr. Cheesebrough consented thereto. Thereafter oil and dunnage furnished said vessels, including said steamship "Portland," were charged on the books of libelant to the vessel to which the oil and dunnage were furnished respectively, and bills therefor were delivered to said California-Atlantic Steamship Company, wherein the oil and dunnage furnished to the said [18] vessels, including the steamship "Portland," whose home port was New York, were charged to the vessels

respectively and charterer, as follows: "S. S. 'Portland' and Charterer, to Union Oil Company of California, Dr.," etc. Said oil and dunnage was furnished at the prices and under the conditions specified in said agreement of 18 April, 1911, except as modified in this section.

VI.

All bills for oil and dunnage furnished said steamship "Portland" so rendered as aforesaid were paid by said California-Atlantic Steamship Company, except the bills for oil and dunnage as set forth in section IV hereof, no part of which has been paid.

Dated: March —, 1919.

McCUTCHEN & WILLARD,  
Proctors for Libelant.  
ANDROS & HENGSTLER,  
Proctors for Respondent.

[Endorsed]: Filed Jun. 5, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [19]

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship PORTLAND, etc.,

Respondent.

McCUTCHEM, WILLARD, MANNON & GREEN,  
Proctors for Libelant.

ANDROS & HENGSTLER, Proctors for Claimant.

**(Order That Decree be Entered in Favor of Libelant,  
etc.)**

A decree will be entered in favor of libelant, and  
the cause referred to the commissioner to ascertain  
and report the amount due.

May 14th, 1920.

M. T. DOOLING,

Judge.

[Endorsed]: Filed May 14, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [20]

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Decree.**

The above-entitled cause having come on regularly for trial upon an agreed statement of facts, libelant appearing by Messrs, McCutchen, Willard, Mannon & Greene, its proctors, and claimant and respondent appearing by Messrs. Andros & Hengstler, its proctors; and

It appearing that all of the allegations of the amended libel are true and that this Court has filed its opinion herein holding that claimant and respondent is liable to libelant on account of supplies furnished to said vessel, as set forth in the amended libel; and

It further appearing from the agreed statement of facts on file herein that on July 5, 1912, at Oleum, California, libelant furnished to respondent vessel three thousand five hundred (3,500) feet of dunnage of the value of forty-three and [21] 75/100 (43.75) dollars, and on July 24, 1912, at Balboa,

Canal Zone, libelant furnished seven hundred and seven and  $78/100$  (707.78) barrels of fuel oil of the value of nine hundred and ninety-seven and  $23/100$  (997.23) dollars to respondent vessel, and on August 5, 1912, at Balboa, Canal Zone, libelant furnished three hundred and fifteen and  $34/100$  (315.34) barrels of fuel oil of the value of three hundred and ninety-four and  $18/100$  (394.18) dollars to respondent vessel, and on August 31, 1912, at San Francisco, California, libelant furnished two thousand nine hundred and fifty-nine and  $13/100$  (2,959.13) barrels of fuel oil of the value of one thousand nine hundred and twenty-three and  $44/100$  (1,923.44) dollars to respondent vessel, and on November 27, 1912, at Balboa, Canal Zone, libelant furnished nine hundred and ninety-nine and  $37/100$  (999.37) barrels of fuel oil of the value of one thousand two hundred and forty-nine and  $21/100$  (1,249.21) dollars to respondent vessel;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Union Oil Company of California, libelant herein, do have and recover against American steamship "Portland," her engines, boats, tackle, apparel and furniture, etc., the sum of forty-three and  $75/100$  (43.75) dollars, together with interest thereon at the rate of seven (7) per cent per annum from the 5th day of July, 1912, until paid; the sum of nine hundred and ninety-seven and  $23/100$  (997.23) dollars, together with interest thereon at the rate of seven (7) per cent. per annum from the 24th day of July, 1912, until paid; the sum of three hundred and ninety-four and

18/100 (394.18) dollars, together with interest thereon at the rate of seven (7) per cent per annum from the 5th day of August, 1912, until paid; the sum of [22] one thousand nine hundred and twenty-three and 44/100 (1,923.44) dollars, together with interest thereon at the rate of seven (7) per cent per annum from the 31st day of August, 1912, until paid; and the sum of one thousand two hundred and forty-nine and 21/100 (1,249.21) dollars, together with interest thereon at the rate of seven (7) per cent per annum from the 27th day of November, 1912, until paid; together with its costs to be hereinafter taxed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that unless an appeal be taken from this decree within the time provided for by the rules and practice of this court, the stipulators for costs and value on the part of claimant of said American steamship "Portland" shall cause the engagements of their said stipulations to be performed or show cause within four (4) days after the expiration of the time provided by the rules and practice of this court within which to appeal why execution should not issue against their goods, chattels and lands for the amounts, together with interest thereon, set forth in this decree.

Dated May 25, 1920.

M. T. DOOLING,  
District Judge.

[Endorsed]: Receipt of a copy of the within Decree is hereby admitted this 19th day of May, 1920.

ANDROS & HENGSTLER,  
Proctors for Respondent.

Filed May 25, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk.

Entered in Vol. 10, Judg. and Decrees, at page 7.  
[23]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Notice of Appeal (August 10, 1920).**

To Union Oil Company of California, and to Messrs.  
McCutchen, Willard, Mannon & Greene, its  
Proctors:

You and each of you will please take notice that the  
claimant of the said American steamship "Port-  
land" hereby appeals to the United States Circuit  
Court of Appeals for the Ninth Circuit from the final  
decree made and entered herein on the 25th day of  
May, 1920, and the whole thereof.

Dated, San Francisco, California, August 10, 1920.

ANDROS & HENGSTLER,

LOUIS T. HENGSTLER,

Proctors for Claimant and Appellant.

[Endorsed]: Due service and receipt of a copy of the within Notice of Appeal is hereby admitted this 10th day of August, 1920.

McCUTCHEM, WILLARD, MANNON &  
GREENE,

Proctors for Libelant.

Filed Aug. 10, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [24]

---

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Assignment of Errors.**

Claimant assigns errors in the proceedings of the District Court as follows:

I.

The District Court erred in finding and holding that all of the allegations of the amended libel are true.

II.

The District Court erred in holding and deciding that claimant and respondent is liable to libelant on



account of supplies furnished to said vessel as set forth in the amended libel.

III.

The District Court erred in that it did not hold and decide that claimant and respondent is not liable to libelant on account of the supplies furnished to said vessel as set forth in said amended libel.

IV.

The District Court erred in ordering, adjudging and decreeing that libelant should recover against said Amended Steamship "Portland," her engines, boats, tackle, apparel and furniture, etc., the principal sums in said final decree set forth and amounting in the aggregate to the sum of Four Thousand Six Hundred and Seven and 81/100 dollars (\$4,607.81) or any other [25] sum whatever.

V.

The District Court erred in ordering, adjudging and decreeing that libelant should recover against said American steamship "Portland," her engines, boats, tackles, apparel and furniture, etc., the interest in said final decree set forth, or any other interest whatever.

VI.

The District Court erred in ordering, adjudging and decreeing that libelant should recover against said American steamship "Portland," her engines, boats, tackle, apparel and furniture, etc., its costs incurred in said action.

VII.

The District Court erred in that it did not make a

decree dismissing said amended libel, with the costs of the District Court.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
Proctors for Claimant and Appellant.

[Endorsed]: Due service and receipt of a copy of the within assignments of error is hereby admitted this 10th day of August, 1920.

McCUTCHEM, WILLARD, MANNON &  
GREENE,

Proctors for Libelant.

Filed Aug. 10, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [26]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Notice of Appeal (November 19, 1920).**

To Union Oil Company of California and to Messrs.  
McCutchen, Willard, Mannon & Greene, Its  
Proctors:

You, and each of you, will please take notice that

the claimant of the above-named American steamship "Portland," and National Surety Company, a Corporation, her stipulator for release, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree made and entered herein on the 25th day of May, 1920, and the whole thereof.

Dated: San Francisco, California, November 19, 1920.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,

Proctors for Claimant and National Surety Company, Appellants. [27]

**Stipulation Re Filing Notice of Appeal.**

IT IS HEREBY STIPULATED that the foregoing notice of appeal may be filed in the place and stead of the notice of appeal heretofore filed on the 10th day of August, 1920.

Dated; November 19, 1920.

McCUTCHEM, WILLARD, MANNON &  
GREENE,

Proctors for Libellant.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,

Proctors for Claimant and National Surety Company, Appellants.

[Endorsed]: Receipt of a copy of the within notice of appeal and stipulation is hereby admitted this 19th day of Nov., 1920.

McCUTCHEM, WILLARD, MANNON &  
GREENE,

Proctors for Libellant.

Filed Nov. 22, 1920. W. B. Maling, Clerk. By  
C. M. Talyor, Deputy Clerk. [28]

---

In the Southern Division of the United States  
District Court, for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Supersedeas Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That National Surety Company, a corporation, duly  
organized and existing under and by virtue of the  
laws of the State of New York, and licensed to do a  
general surety business in the State of California,  
as surety, is held and firmly bound unto the libelant  
in the above-entitled cause in the sum of Ten Thou-  
sand (\$10,000) Dollars to be paid to the said oblige  
to which payment, well and truly to be made, it  
hereby binds itself by these presents, signed, sealed  
and dated at San Francisco, this 20th day of August,  
1920.

The condition of the foregoing obligation is such  
that whereas claimant has appealed to the U. S. Cir-  
cuit Court of Appeals for the Ninth Circuit to re-

verse the decree, and the whole thereof, heretofore entered on the 25th day of May, 1920, in the Southern Division of the United States District Court for the Northern District of California, First Division, in Admiralty, in the above-entitled action, which decree was rendered in favor of the libelant therein, for the sum of \$43.75, together with interest thereon at the rate of seven per cent per annum from the 5th day of July, 1912, until paid; the sum of \$997.23 together with interest thereon at the rate of seven per cent per annum from the 24th day of July, 1912, until paid; the sum [29] of \$394.18, together with interest thereon at the rate of seven per cent per annum from the 5th day of August, 1912, until paid; the sum of \$1,923.44, together with interest thereon at the rate of seven per cent per annum from the 31st day of August, 1912, until paid; and the sum of \$1,-249.21, together with interest thereon at the rate of seven per cent per annum from the 27th day of November, 1912, until paid; together with its costs.

NOW, THEREFORE, the condition of this obligation is such that if claimant shall prosecute such appeal to effect and answer all damages and costs if it shall fail to make good said appeal, then this obligation shall be void, but otherwise it shall remain in full force and effect.

NATIONAL SURETY COMPANY,

[Seal]

By FRANK H. POWERS,

Resident Vice-President.

By F. J. CRISP,

Resident Assistant Secretary.

The premium on this bond is \$100 per annum.



In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Bond for Costs on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That National Surety Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New York, and licensed to do a general surety business in the State of California, as surety, is held and firmly bound unto the libelant in the above-entitled cause in the sum of Two Hundred and Fifty (\$250) Dollars to be paid to the said obligee, to which payment well and truly to be made, it hereby binds itself firmly by these presents, signed, sealed and dated at San Francisco, this 20th day of August, 1920.

The condition of this obligation is such that whereas lately in the Southern Division of the United States District Court for the Northern District of California, First Division, in Admiralty, in the above-entitled cause, a decree was entered in favor of the above-named libelant, from which de-

eree claimant has appealed to the U. S. Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, if said claimant as appellant shall prosecute its appeal to effect, and shall pay all costs on appeal if said appeal is not sustained, then this obligation shall be void, but otherwise to be and remain in full force and effect, and execution [31] to issue thereon for the amount of such costs not exceeding Two Hundred and Fifty (\$250) Dollars, at the instance of any person interested as aforesaid.

NATIONAL SURETY COMPANY.

[Seal]

By FRANK H. POWERS,

Resident Vice-President.

By F. J. CRISP,

Resident Assistant Secretary.

The premium on this bond is \$10 for the term thereof.

State of California,

City and County of San Francisco,—ss.

On this twentieth day of Aug., in the year one thousand nine hundred and twenty, before me, John McCallan, a notary public in and for the said City and County of San Francisco, residing herein, duly commissioned and sworn, personally appeared Frank H. Powers and F. J. Crisp, known to me to be the resident vice-president and resident assistant secretary, respectively, of the National Surety Company, the corporation described in, and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the



corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] JOHN McCALLAN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Aug. 20, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [32]

---

In the Southern Division of the United States Dis-  
trict Court, for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 15,370.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant,

vs.

The Steamship "PORTLAND," etc.,

Respondent.

**Notice of Filing Bond for Costs on Appeal and Bond  
Staying Execution on Appeal.**

To the Libelant Above Named and to Messrs. Mc-  
Cutchen, Willard, Mannon & Greene, Its  
Proctors:

You, and each of you, will please take notice that  
claimant did on the 20th day of August, 1920, file

in the clerk's office of the above-entitled court its bond for costs on appeal and also its bond staying execution on appeal with National Surety Company, a corporation, as surety.

Yours, etc.,  
ANDROS & HENGSTLER,  
Proctors for Claimant.

[Endorsed]: Due service and receipt of a copy of the within notice of filing bonds is hereby admitted this 20th day of Aug., 1920.

McCUTCHEN, WILLARD, MANNON &  
GREENE,

Proctors for Libelant.

Filed Aug. 20, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [33]

---

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,370.

The Steamship "PORTLAND," etc., and THE  
NATIONAL SURETY COMPANY, a Corporation,

Respondents and Appellants,  
vs.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Libelant and Appellees.

**Citation on Appeal (Copy).**

The United States of America,—ss.

The President of the United States to Union Oil Company of California, a Corporation, Libelant and Appellee, and to Messrs. McCutchen, Willard, Mannon & Greene, Its Proctors, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, within thirty days from date hereof, pursuant to an appeal filed in the office of the Clerk of the Southern Division of the United States District Court for the Northern District of California, wherein the said steamship "Portland" and the National Surety Company, named in the decree in said appeal mentioned, are appellants and you, the said Union Oil Company of California, a corporation, are appellee, to show cause, if any there be, why said decree, signed, filed and entered on the 25th day of May, 1920, and mentioned in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK H. RUDKIN, Judge of the District Court of the United States, Southern Division, Northern District [34] of California, this 24th day of November, A. D. 1920, and of the Independence of the United States the one hundred and forty-fifth year.

FRANK H. RUDKIN,  
Judge of the United States District Court for the  
Northern District of California.

[Endorsed]: Due service and receipt of a copy of the within citation on appeal is hereby admitted this 24th day of Nov., 1920.

McCUTCHEN, WILLARD, MANNON &  
GREENE,

Proctors for Respondents and Appellants.

Filed Nov. 24, 1920. W. B. Maling, Clerk. By  
C. M. Taylor, Deputy Clerk. [35]

---

**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 35 pages, numbered from 1 to 35, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the case of Union Oil Company of California, a Corporation, vs. The Steamship "Portland," etc., No. 15,370, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the instructions of the proctors for claimant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing Apostles on Appeal is the sum of twelve dollars and twenty cents (\$12.20), and that the same has been paid to me by the proctors for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

this 13th day of December, A. D. 1920,

[Seal]

WALTER B. MALING,  
Clerk.

By C. M. Taylor,  
Deputy Clerk. [36]

---

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,370.

The Steamship "PORTLAND," etc., and THE NATIONAL SURETY COMPANY, a Corporation,

Respondents and Appellants,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation,

Libelant and Appellees,

**Citation on Appeal (Original).**

The United States of America,—ss.

The President of the United States to Union Oil Company of California, a Corporation, Libelant and Appellee, and to Messrs. McCutchen, Willard, Mannon & Greene, Its Proctors,  
GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, within thirty days from date

hereof, pursuant to an appeal filed in the office of the Clerk of the Southern Division of the United States District Court for the Northern District of California, wherein the said steamship "Portland" and the National Surety Company, named in the decree in said appeal mentioned, are appellants and you, the said Union Oil Company of California, a corporation, are appellee, to show cause, if any there be, why the said decree, signed, filed and entered on the 25th day of May, 1920, and mentioned in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK H. RUDKIN, Judge of the District Court of the United States, Southern Division, Northern District [37] of California, this 24th day of November, A. D. 1920, and of the Independence of the United States the one hundred and forty-fifth year.

FRANK H. RUDKIN,  
Judge of the United States District Court for the  
Northern District of California. [38]

Due service and receipt of a copy of the within Citation on Appeal is hereby admitted this 24th day of Nov., 1920.

McCUTCHEN, WILLARD, MANNON &  
GREENE,

Proctors for Respondents and Appellants.

[Endorsed]: No. 15,370. District Court of the United States for the Northern District of California, The Steamship "Portland," etc. and The National Surety Company, a Corporation, Respond-

ents and Appellants, vs. Union Oil Company of California, a Corporation, Libellant and Appellee. Citation on Appeal. Filed Nov. 24, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [39]

---

[Endorsed]: No. 3608. United States Circuit Court of Appeals for the Ninth Circuit. The Steamship "Portland," Her Engines, Boilers, Boats, Tackle, Apparel, Furniture and Appurtenances, and The National Surety Company, a Corporation, Appellants, vs. Union Oil Company of California, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed December 13, 1920.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

---

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

S. S. "PORTLAND, Her Engines, etc.,  
Appellant,  
vs.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,  
Appellee.

**Order Extending Time to and Including October 9, 1920, Within Which to File Record and Docket Cause.**

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the time of plaintiff above named within which to print the record and file and docket this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby extended to and including the 9th day of October, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: 3608. In the United States Circuit Court of Appeals, for the Ninth Circuit. S. S. "Portland," Her Engines, Appellant, vs. Union Oil Company of California, a Corporation, Appellee. Order Extending Time to and Including October 9, 1920, Within Which to File Record and Docket Cause. Filed Sep. 8, 1920. F. D. Monckton, Clerk. Re-filed Dec. 13, 1920. F. D. Monckton, Clerk.



In the United States Circuit Court of Appeals for  
the Ninth Circuit.

S. S. "PORTLAND," Her Engines, etc.,  
Appellant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Appellee.

**Order Extending Time to and Including November 9,  
1920, Within Which to File Record and Docket  
Cause.**

GOOD CAUSE APPEARING THEREFOR,  
IT IS HEREBY ORDERED that the time of  
plaintiff above named within which to print the  
record and file and docket this cause on appeal in  
the United States Circuit Court of Appeals for the  
Ninth Circuit be, and the same is hereby extended  
to and including the 9th day of November, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

[Endorsed]: 3608. In the United States Circuit  
Court of Appeals, for the Ninth Circuit. S. S.  
"Portland," Her Engines, etc., Appellant vs. Union  
Oil Company of California, a Corporation, Ap-  
pellee. Order Extending Time to and Including  
November 9, 1920, Within Which to File Record  
and Docket Cause. Filed Oct. 7, 1920. F. D.  
Monckton, Clerk. Re-filed Dec. 13, 1920. F. D.  
Monckton, Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. —.

S. S. "PORTLAND," Her Engines, etc.,  
Appellant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,  
Appellee.

**Order Extending Time to and Including December 5,  
1920, Within Which to File Record and Docket  
Cause.**

GOOD CAUSE APPEARING THEREFOR,  
IT IS HEREBY ORDERED that the time of  
plaintiff above named within which to print the  
record and file and docket this cause on appeal in  
the United States Circuit Court of Appeals for the  
Ninth Circuit, be, and the same is, hereby extended  
to and including the 5th day of December, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

[Endorsed]: 3608. In the United States Circuit  
Court of Appeals, for the Ninth Circuit. S. S.  
"Portland," Her Engines, etc., Appellant vs. Union  
Oil Company of California, a Corporation, Ap-  
pellee. Order Extending Time to and Including  
December 5, 1920, Within Which to File Record  
and Docket Cause. Filed Nov. 9, 1920. F. D.  
Monckton, Clerk. Re-filed Dec. 13, 1920. F. D.  
Monckton, Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. —.

The Steamship "PORTLAND," etc.,  
Appellant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a  
Corporation,

Appellee.

**Order Extending Time of Appellant to and Including January 10, 1921, Within Which to Print the Apostles on Appeal and File and Docket This Cause on Appeal.**

GOOD CAUSE APPEARING THEREFOR,  
IT IS HEREBY ORDERED that the time of  
appellant above named within which to print the  
apostles on appeal and file and docket this cause on  
appeal in the United States Circuit Court of Ap-  
peals, for the Ninth Circuit be, and the same is,  
hereby extended to and including the 8th day of  
January, 1921.

WM. H. HUNT,

Judge of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

[Endorsed]: No. 3608. In the United States Cir-  
cuit Court of Appeals for the Ninth Circuit. The  
Steamship "Portland," etc., Appellant, vs. Union  
Oil Company of California, a Corporation, Ap-  
pellee. Order Extending Time of Appellant to File  
Record and Docket Cause. Filed Dec. 9, 1920. F.  
D. Monckton, Clerk. Refiled Dec. 13, 1920. F. D.  
Monckton, Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

UNION OIL COMPANY OF CALIFORNIA,  
Libelant,

vs.

S. S. "PORTLAND,"

Respondent.

**Stipulation Re Charter-party.**

IT IS HEREBY STIPULATED by the parties hereto that the annexed is a true copy of the charter-party referred to in Article 11 of the "Memorandum for Stipulation of Facts" on file herein, and that the same may be incorporated in the Apostles on Appeal and used by the parties and the Court as one of the facts upon which the cause is submitted for decision.

McCUTCHEEN, WILLARD, MANNON &  
GREENE,

Proctors for Libelant.

ANDROS & HENGSTLER,

Proctors for Respondent.

COPY.

**CHARTER-PARTY.**

THIS CHARTER-PARTY, made and concluded upon in San Francisco, the 28th day of August, 1911, between C. W. Wiley, agents for owners of the good American Screw Steamship Portland of New York of 2286 tons gross register, and 1587 tons net register, and California-Atlantic S. S. Co., Charterers, of the City of San Francisco.

WITNESSETH: That the former party agree to let, and the latter agree to hire the said steamship Portland for the term of Twenty-four (24) calendar months certain, the charterers having the option of continuing the Charter for any further period of twenty-four (24) calendar months more, at the option of the Charterers, they giving the Owners four (4) months' notice previous to redelivery of the vessel. The hire to commence from the day on which she is delivered or placed at the disposal of the Charterers (but not before September 1st) at New York, N. Y., in such dock or such safe wharf or place (where she may always safely lie afloat) and as Charterers may *direct*, she being then ready with clear holds, tight, staunch, strong and having been newly painted and every way fitted for the service (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage): to be employed in such lawful trades as Charterers or their Agents shall direct from New York to San Francisco and return, via Straits of Magellan, and to operate on the Pacific Coast not north of Comox, nor south of Panama, on the following conditions:

Owners to install oil burners, together with necessary piping and tanks with a capacity of 3,600 barrels of fuel oil, all in accordance with the requirements of the U. S. Inspection Laws and at their expense, and if charterers fail to avail themselves of the option of the two years renewal, then charterers are to pay the owners \$2,500.00 in U. S. gold coin as their portion of the cost of conversion into an oil burner.

1. That the owners shall provide and pay for all provisions, water, wages and Consular shipping and discharging fees of the captain, officers, engineers, firemen and crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and shall maintain her in a thoroughly efficient state in hull and machinery for and during the service.

2. That the Charterers shall provide and pay for all the fuel, port charges, pilotages, agencies, commissions, Consular charges (except those pertaining to the captain, officers or crew), and all other charges whatsoever, except those before stated or hereafter provided to be paid by the Owners.

3. That the Charterers shall accept and pay at once on delivery of steamer for all fuel in the steamer's bunkers or tanks on delivery, and the Owners shall, on expiration of this Charter-party, pay for all fuel left in the bunkers or tanks, each at the current market prices at the respective ports where she is delivered to them, respectively.

4. That the charterers shall pay for the use and hire of the said vessel two hundred and twenty-five (\$225.00) dollars U. S. gold coin, per running day, commencing on and from the day of her delivery as aforesaid, and at and after the same rate for any part of a month; hire to continue until her delivery, with clean holds to the Owners (unless lost) at New York, N. Y., or San Francisco, California, at the option of the Owners, they giving the Charterers at least four months' notice prior to the expiration of this charter.

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire becomes due, said payment shall be made for such a length of time as the Owners or their agents and Charterers or their agents may agree upon as the estimated time necessary to complete the voyage, but Charterers shall be allowed to retain sufficient sum to cover estimated amount of disbursements and value of coal that will be left in bunkers and when the steamer is delivered to Owners or their agents any difference shall be refunded by steamer or paid by Charterers as the case may require.

6. Payment of said hire to be made in cash as follows: Two thousand dollars (\$2,000.00) upon the signing of this charter party, four thousand, seven hundred and fifty dollars (\$4,750.00) upon the day of the ship's delivery to charterers to cover 30 days in advance and at the expiration of said thirty days Charterers to pay another thirty days' hire in advance and so on throughout the term of this charter. Payments to be made at Seattle, Washington, or New York, N. Y., as Owners may direct and in default of such payment or payments as herein specified the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers without prejudice to any claim they, the Owners, may otherwise have on the Charterers, in pursuance of this charter.

8. That the cargo or cargoes shall be laden and/or discharged in any dock or at any wharf or place that the Charterers or their agents may direct, but

the steamer shall not be bound to lie at any wharf or place where she cannot safely be afloat at any state of the tide.

9. That the whole reach of the vessel's holds, decks, and usual places of loading and accommodation of the ship (not more than she can reasonably stow and carry), shall be at the Charterer's disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

10. That the captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with ship's crew, tackle and boats. That the captain (although appointed by the Owners) shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the captain signing bills of lading or otherwise complying with the same, when and as requested by the Charterers.

11. That if the Charterers shall have reason to be dissatisfied with the conduct of the captain, officers or engineers, the owners shall, on receiving particulars of the complaint, investigate and the same, and if necessary, make a change in the appointments.

12. That the Charterers shall have permission to appoint one supercargoes, who shall accompany the steamer during her voyage, and be furnished by the Owners, free of charge, with first-class accommodation and same fare as provided for captain's table.

13. That the master shall be furnished from time



to time with all requisite instructions and sailing directions, and he shall keep a full and correct deck and engine log of the voyage or voyages, which are to be patent to Charterers or their agents, and shall furnish the Charterers, their agent, or supercargo, when required, with a true daily copy of the logs, showing the course of the steamer and distance run, and the consumption of fuel and shall take every advantage of wind by using the sails (if any on board) with a view to economize the expenditure of fuel.

14. That the master shall use all diligence in caring for the ventilation of the cargo.

15. That in the event of the loss of time from deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing the working of the vessel for more than twenty-four running hours, the payment of the hire shall cease until she be again in an efficient state to resume her service at such place or position where the payment of hire ceased, and should the vessel in consequence of any of the matters aforesaid put into any port, other than that to which she is bound, the port charges, pilotages and other expenses at such port shall be borne by the steamer's Owners, but should the vessel be driven into port or to anchorage by stress of weather or from any accident to the cargo, such detention or loss of time shall be at the Charterers' risk and expense.

16. That should the vessel be lost, any hire paid in advance and not earned (reckoning from the date

of her last being heard of) shall be returned to the Charterers.

17. The act of God, enemies, fire, restraint of princes, rulers and people and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation and errors of navigation throughout this charter-party always mutually to be excepted, but it is mutually agreed that this charter is subject to all the terms and provisions of and exemptions from liability contained in the act of Congress of the U. S. of America, approved on the thirteenth day of February, 1893, and entitled "An Act relating to navigation of vessels, etc." (Harter Act).

18. Should any dispute arise between the Owners and the Charterers, the matter in dispute shall be referred to one person in San Francisco, one from Seattle, one to be appointed by each of the parties hereto, and in case they cannot agree parties so appointed to appoint a third.

19. That the Owners shall have a lien upon all cargoes and all sub-freights, for any amounts due under this charter, and the Charterers shall have a lien on the ship for all moneys paid in advance and not earned.

21. That as the steamer may be from time to time employed in tropical waters during the term of this charter, steamer is to be docked, bottom cleaned and painted whenever Charterers and master think necessary, but, at least once every six months, and payment of the hire to be suspended until she is again in proper state for the service at the place where the hire was suspended. The ex-

pense incurred in docking, cleaning and painting shall be borne by the Owners, provided suitable dry-dock is available at the ports to which she may be ordered.

22. The steamer to be docked and painted immediately before delivery to Charterers under this charter.

23. That the Owners shall provide ropes, falls, slings and blocks, including necessary wire net slings 8'x8' for loading or discharging general cargo, also all necessary gear to handle ordinary cargo up to three tons (of 2240 pounds each) in weight, also lanterns for night work, and rain tents as customary at Balboa.

24. Steamer to work night and day if required by Charterers and all steam winches to be at Charterers' disposal during loading and discharging, and steamer to provide men to work same both day and night as required, Charterers agreeing to pay extra expense, if any, incurred by reason of night work, at the current local rate.

24½. It being expressly agreed that such winchman so provided shall while so employed be under the exclusive control and direction of the charterers or their agents and be considered their servants and Charterers agree to indemnify and save harmless the owners and said vessel from the consequences and liabilities that may arise from the acts of such men while so employed.

25. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit. Should the vessel be put into a port of distress or be under av-

erage, she shall be consigned to Owners or their agents, the Owners paying the usual charges and commissions, and in case an average statement shall be required, the same shall be made by adjusters mutually agreeable to both parties who are to attend to the settlement and collection of the average, and to be paid the customary charges. General average, if any, shall be adjusted according to York-Antwerp Rules, 1890.

26. Should steamer not be ready for delivery at port of delivery on or before September 30th, 1911, Charterers or their agents to have the option of canceling this charter at any time not later than the day of steamer's readiness.

26½. That in event of the steamer not making her canceling date, any money or moneys paid by the Charterers on account of hire to be refunded.

27. That the Charterers shall assume, and hold the Owners harmless from any and all charges for brokerage or commissions connected with this charter should any claims be made.

28. Penalty for nonperformance of this contract, estimated amount of damages.

29. If the ship is employed in any business not permitted by the ordinary marine insurance, the charterers shall pay the extra expense of the insurance which the Owners may hereby incur. In case the ship is employed by the charterers in any business whereby it shall be deemed necessary by the Owners to obtain war risk insurance the additional expense of war risk insurance shall be borne and paid by the charterers.

30. In the event of any claim against Charterers by owners for any loss or injury to the said steamer or death or injury to any of her crew, Charterers to have benefit of any insurance insuring owners against such loss in reduction of the said claim.

Signed:

PORTLAND, INC.

C. W. WILEY,

Agent.

CALIFORNIA ATLANTIC S. S. CO.

By A. S. CHESEBROUGH,

President.

Witness:

J. D. AMOS.

[Endorsed]: No. 3608. In the United States Circuit Court of Appeals for the Ninth Circuit. Union Oil Company of California, Libellant, vs. S. S. "Portland," Respondent. Stipulation Re Charterparty. Filed Dec. 23, 1920. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

